

NPM No. 14-2010

21 May 2010

MR. RAYMUND T. GONZALES

*Chairman, Technical Working Group – Infrastructure Committee
BSP Bids and Awards Committee*

BANGKO SENTRAL NG PILIPINAS

A Mabini Street, Malate 1004 Manila

Dear **Mr. Gonzales**:

We refer to your letter dated 22 February 2010 seeking to formalize the verbal advice made by the Government Procurement Policy Board – Technical Support Office (GPPB – TSO) in meeting held last 9 February 2010. Included in the matters discussed during said meeting were the same issues raised by the Bangko Sentral ng Pilipinas (BSP) in its previous letters dated 15 September 2009 and 7 December 2009.

1. *Whether BSP may set a deadline for the availability of bid documents at a date earlier than the deadline for the submission and receipt of bids.*

We respond in the negative. Section 17.3 (a) of the revised Implementing Rules and Regulations (IRR) of Republic Act No. 9184 (RA 9184) clearly mandates the Bids and Award Committee to make available the bidding documents from the time the invitation to bid is first advertised or posted until the deadline for the submission and receipt of bids.

2. *Whether BSP may be allowed to partially upload bidding documents in its website and the Philippine Government Electronic Procurement System (PhilG-EPS) considering the large sizes of the files and the high degree of security and discretion which BSP infrastructure projects require.*

Pursuant to Section 17.5 of the IRR, it is mandatory for BSP to post all its bidding documents on both its website and the PhilG-EPS. If you encounter any difficulty in uploading large files, you may immediately seek assistance from the PhilG-EPS System Administrator at telephone numbers 9005231 to 38.

3. *Whether BSP may be allowed to implement an alternative scheme under the Guidelines for the Procurement and Implementation of Contracts for Design and Build Infrastructure Projects by adopting a revised contract cost prior to construction.*

Procurement under the design and build scheme is different from the conventional procurement method under which the procuring entity prescribes the detailed engineering design and corresponding bill of quantities (BOQ) to be used by the bidder in submitting unit bid prices for each work item in the BOQ.

In the design and build scheme, the bidder proposes to undertake his own detailed engineering design and construction method which meets the performance specifications and parameters set by the procuring entity. Bid proposals are submitted as fixed total lump-sum prices for equal evaluation and comparison since bidders have different designs, structures and breakdowns of quantities and costs.

The design and build scheme, thus, invites the ingenuity and competitiveness of the bidders, in terms of the risks they assume in their designs and for the quantities they may have to guarantee. An eligible bidder may be awarded the contract so long as its bid complies with the preliminary design and construction studies formulated by the procuring entity.

Following established rules and principle of procurement, the bidder should not be allowed to modify his lump-sum bid price after the opening of the bid and award of contract. Allowing the winning bidder to increase/modify his construction costs would be tantamount to improvement of his bid which is strictly prohibited under the law and rules. In addition, evaluating bids using the overhead and mark-up component as sole basis may not be logical since bidders may have unique designs with varying quantities and cost structures.

However, it remains the procuring entity's responsibility to set a realistic Approved Budget for the Contract (ABC). The ABC should be determined based on the conceptual design using accepted engineering and constructions practices in the industry, and following the performance specifications and parameters set for the project. In order to address the seeming ambiguity in certain elements of the bid, allowing a provisional sum perhaps equal to ten percent (10%) of the ABC or answering modifications by permitting variation orders up to ten percent (10%) of the contract price may be made.

Finally, BSP, as the procuring entity, should draw up clear technical specifications and criteria for the design and build project as will provide definitive information to the bidders in preparing responsive proposals and realistic lump-sum bid prices.

4. *Whether BSP may specify in the Advertisement of the Invitation to Bid for Infrastructure Projects that the minimum classification of contractors eligible to bid shall be the next higher bracket of Allowable Range of Contract Cost (ARCC) from the ARCC bracket where the ABC falls.*

At the outset, it bears stressing that the purpose of eligibility check is to ensure that the procuring entity is dealing with a legitimate organization or one duly formed and organized under the laws of the Philippines. Thus, one of the licenses required during eligibility is the license and/or registration for the type and cost of the infrastructure contract to be bid issued by the Philippine Contractors Accreditation Board (PCAB).

Imposing a higher bracket of ARCC – a piece of information found in the PCAB license

and/or registration for the type and cost of contract -- than the ARCC bracket where the ABC falls has the effect of disqualifying contractors who are otherwise eligible to bid or have the appropriate licenses to engage in said type and cost of infrastructure contracts. We thus, advise against this practice. If the intent is for BSP to raise the quality of work done by its contractors, the proper course of action is to set higher standards or defining clear project requirements in its technical specifications.

We hope to have provided sufficient guidance on the matter. Should you have additional concerns, please do not hesitate to contact us.

Very truly yours,



RUBY U. ALVAREZ
Executive Director III